

one knows exactly what 2005 will bring, we can end this politicization of the Judiciary Committee process and adopt a protocol which I have submitted but which would say that after so many days after a nomination, the committee would consider it with a hearing; so many days after the hearing, the committee would vote; and so many days later, it would come to the floor. We could get rid once and for all of this politicization of the nomination process.

I ask unanimous consent that the text of my resolution of protocol be printed in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 2.)

Mr. SPECTER. I yield the floor.

EXHIBIT 1

WILMER, CUTLER & PICKERING,
Washington, DC, June 24, 2002.

Hon. PATRICK J. LEAHY,

Chairman, Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to express our concern about your recent request that the Department of Justice turn over "appeal recommendations, certiorari recommendations, and amicus recommendations" that Miguel Estrada worked on while in the Office of the Solicitor General.

As former heads of the Office of the Solicitor General—under Presidents of both parties—we can attest to the vital importance of candor and confidentiality in the Solicitor General's decisionmaking process. The Solicitor General is charged with the weighty responsibility of deciding whether to appeal adverse decisions in cases where the United States is a party, whether to seek Supreme Court review and adverse appellate decisions, and whether to participate as amicus curiae in other high-profile cases that implicate an important federal interest. The Solicitor General has the responsibility of representing the interests not just of the Justice Department, nor just of the Executive Branch, but of the entire federal government, including Congress.

It goes without saying that, when we made these other critical decisions, we relied on frank, honest, and thorough advice from our staff attorneys, like Mr. Estrada. Our decisionmaking process required the unbridled, open exchange of ideas—an exchange that simply cannot take place if attorneys have reasons to fear that their private recommendations are not private at all, but vulnerable to public disclosure. Attorneys inevitably will hesitate before giving their honest, independent analysis if their opinions are not safeguarded from future disclosure. High-level decisionmaking requires candor, and candor in turn requires confidentiality.

Any attempt to intrude into the Office's highly privileged deliberations would come at the cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself.

Although we profoundly respect the Senate's duty to evaluate Mr. Estrada's fitness for the federal judiciary, we do not think that the confidentiality and integrity of internal deliberations should be sacrificed in the process.

Sincerely,

SETH P. WAXMAN.
WALTER DELLINGER.
DREW S. DAYS, III.

KENNETH W. STARR.

CHARLES FRIED.

ROBERT H. BORK.

ARCHIBALD COX.

EXHIBIT 2

S. RES. ____

Whereas there has been a continuing controversy with the political party of the President protesting the process on confirmation of Federal judges by the Senate when the Senate is controlled by the opposite political party; and

Whereas there is a concern about a lack of public confidence in the Senate's judicial confirmation process when different parties control the White House and the Senate: Now, therefore, be it

Resolved,

SECTION 1. PROTOCOL FOR NONPARTISAN CONFIRMATION OF JUDICIAL NOMINEES.

(a) TIMETABLES.—

(1) COMMITTEE TIMETABLES.—The Chairman of the Committee on the Judiciary, in collaboration with the Ranking Member, shall—

(A) establish a timetable for hearings for nominees to the United States district courts, courts of appeal, and Supreme Court, to occur within 30 days after the names of such nominees have been submitted to the Senate by the President; and

(B) establish a timetable for action by the full Committee to occur within 30 days after the hearings, and for reporting out nominees to the full Senate.

(2) SENATE TIMETABLES.—The Majority Leader shall establish a timetable for action by the full Senate to occur within 30 days after the Committee on the Judiciary has reported out the nominations.

(b) EXTENSION OF TIMETABLES.—

(1) COMMITTEE EXTENSIONS.—The Chairman of the Committee on the Judiciary, with notice to the Ranking Member, may extend by a period not to exceed 30 days, the time for action by the Committee for cause, such as the need for more investigation or additional hearings.

(2) SENATE EXTENSIONS.—

(A) IN GENERAL.—The Majority Leader, with notice to the Minority Leader, may extend by a period not to exceed 30 days, the time for floor action for cause, such as the need for more investigation or additional hearings.

(B) RECESS PERIOD.—Any day of a recess period of the Senate shall not be included in the extension period described under subparagraph (A).

(c) REPORT OF NOMINATION TO SENATE.—

(1) NOMINATION TO SUPREME COURT.—Regardless of the vote of the Committee on the Judiciary, a nomination for the Supreme Court of the United States shall be reported by the Committee for action by the full Senate.

(2) NOMINATION TO DISTRICT COURT OR COURT OF APPEALS.—If a nomination for the United States district court or court of appeals is rejected by the Committee on the Judiciary on a party line vote, the nomination shall be reported by the Committee for action by the full Senate.

UNANIMOUS CONSENT REQUEST—

S. 2949

The PRESIDING OFFICER. The Senate from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 623, S. 2949, the aviation security legislation; that the Smith-Boxer amendment at the desk be considered and agreed to; the committee amendment

be agreed to; the bill, as amended, be read three times, passed, and the motion to reconsider be laid on the table, without any intervening action or debate.

This legislation is sponsored by Senators BOB SMITH and BARBARA BOXER, an unlikely pair, you would think, to sponsor legislation. But they agree, as a majority of the Senate agrees, we should move forward on this legislation to allow certain pilots in commercial aviation to be armed. That is what the legislation is all about.

The PRESIDING OFFICER. Is there objection?

Mr. SPECTER. Mr. President, on behalf of the leader, Senator LOTT, I have been asked to lodge a formal objection to the unanimous consent request. I know the Senator from Nevada had expected that.

I want it plain that I express none of my own views on the pending legislation in lodging this formal objection. I am the last Republican available to represent the leader, who has asked that a formal objection be lodged on behalf of other Members.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, I understand my friend from Pennsylvania entering the objection. This measure has been cleared on this side, the Democratic side, for approximately 2 weeks. I understand the Commerce Committee staff has been working diligently on this matter. It is something we should complete. It has widespread support. I appreciate the statement of my friend from Pennsylvania.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business with Senators permitted to speak therein for a period not to exceed 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMERICAN ECONOMY

Mr. DOMENICI. Madam President, it isn't often that a Senator from New Mexico and a Republican quotes an editorial by the Washington Post regarding economics and economic activity and America's economic future. This morning I caught an editorial in that newspaper which I have here behind me. It is from Saturday, October 5. It is styled "Negative Al Gore."

I didn't put it up here to be negative to Al Gore. I put it up here because the editors of this newspaper have come to the conclusion, and have come to it rather firmly, that the President of the United States, George Bush, is not responsible for the current state of the American economy, nor did he do anything to cause the recession—how mild it was, how deep it was, how long it has lasted. He didn't cause it.

I would like to start first with a statement which I will print in the